

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES SCOTT MCKEE  
(CRD No. 3222516),

Respondent.

Disciplinary Proceeding  
No. 2010025217901

Hearing Officer – MC

**DEFAULT DECISION**

September 13, 2012

**Respondent James Scott McKee is barred from associating with any FINRA member firm in any capacity for: (i) knowingly and recklessly making material misrepresentations and omissions to induce customers to invest in securities, in violation of Section 10(b) of the Securities Exchange Act, Rule 10b-5 thereunder, and NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010; (ii) converting customer funds, in violation of NASD Rules 2330 and 2110, and FINRA Rules 2150 and 2010; (iii) making an unsuitable investment recommendation, in violation of NASD Rules 2310 and 2110, and FINRA Rule 2010; (iv) making false statements to his FINRA member firm, in violation of FINRA Rule 2010; (v) engaging in private securities transactions without notifying or obtaining prior approval from his FINRA member firm, in violation of NASD Rules 3040 and 2110, and FINRA Rule 2010; (vi) failing to produce documents and information requested by FINRA staff, in violation of FINRA Rules 8210 and 2010; and (vii) testifying falsely during an on-the-record interview, in violation of FINRA Rules 8210 and 2010. In addition, McKee is ordered to pay restitution to five customers, with interest.**

**Appearances**

Gregory Firehock, Senior Litigation Counsel, and C. Anthony Trambley, Senior Counsel, for the Department of Enforcement.

No appearance by or on behalf of Respondent.

## **DECISION**

### **I. Introduction**

On February 14, 2012, the Department of Enforcement filed a Complaint with seven causes of action alleging that Respondent James Scott McKee committed serious violations of securities laws and regulations over a period of more than five years, extending from February 2006 through September 2011 (the "relevant period").<sup>1</sup> Despite being served with the Complaint, Notice of Complaint, and Second Notice of Complaint, McKee has not filed an Answer or otherwise responded to the Complaint.

On May 4, 2012, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions ("Default Motion") supported by the Declaration of C. Anthony Trambley in Support of Motion for Entry of Default Decision and seven exhibits. On July 11, 2012, Enforcement filed the Supplemental Declaration of C. Anthony Trambley.<sup>2</sup>

### **II. Findings of Fact and Conclusions of Law**

#### **A. Jurisdiction**

From November 2002 until September 2008, McKee was a registered representative and principal with LPL Financial Corporation ("LPL"). From September 2008 to November 2010, McKee was a registered representative and principal with Berthel, Fisher & Company Financial Services, Inc. ("Berthel Fisher"). In November 2010, Berthel Fisher allowed McKee to resign

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<sup>1</sup> As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision relies on the NASD and FINRA Conduct Rules in effect at the time of the alleged misconduct. The applicable rules are available at [www.finra.org/rules](http://www.finra.org/rules).

<sup>2</sup> The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its Default Motion, which included the Declaration of C. Anthony Trambley in Support of Motion for Entry of Default Decision, the exhibits attached to the Declaration, and the Supplemental Declaration of C. Anthony Trambley. The Declaration will be referred to as "Decl." or "Trambley Decl.," the exhibits as "CX-," and the Supplemental Declaration as "Supp. Decl."

for soliciting firm customers to invest in outside businesses without notifying or obtaining prior approval from the firm.<sup>3</sup> From December 2010 to September 2011, McKee was a registered representative and principal with Morgan Stanley Smith Barney ("Morgan Stanley"). On September 30, 2011, Morgan Stanley discharged McKee for persuading a customer to invest in an outside business he owned without first notifying or obtaining approval from the firm. He has not been registered or associated with any FINRA member firm since the date of his discharge.<sup>4</sup>

Nonetheless, McKee is subject to FINRA's jurisdiction for the purposes of this disciplinary proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because (i) the Complaint alleges that McKee engaged in misconduct while he was registered with a FINRA member firm and with failures to respond to requests for information FINRA issued within two years of the date FINRA terminated his registration, and (ii) Enforcement filed the Complaint less than two years after FINRA terminated his registration.<sup>5</sup>

#### **B. Default**

On February 14, 2012, Enforcement served the Complaint and Notice of Complaint upon McKee by certified mail at: McKee's residential address as it appeared in the Central Registration Depository ("CRD address"); two other addresses Enforcement had for McKee; and the address of an attorney who represented McKee during the investigation.<sup>6</sup> The attorney signed the return receipt for the copy that was served on his address. However, the mailings sent to all of McKee's addresses were all returned unclaimed.<sup>7</sup>

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<sup>3</sup> Compl. ¶ 36.

<sup>4</sup> Compl. ¶¶ 8-10.

<sup>5</sup> Compl. ¶ 11; CX-1, at 3.

<sup>6</sup> Decl. ¶ 9.

<sup>7</sup> Decl. ¶ 12.

On March 14, 2012, Enforcement served the Complaint and Second Notice of Complaint upon McKee at the same addresses, including the CRD address, and upon McKee's attorney.<sup>8</sup> The mailing to McKee's CRD address was delivered, and the Postal Service returned the certified receipt signed illegibly and dated April 2, 2012.<sup>9</sup> The Postal Service also returned the certified receipt for the mailing to one of the other addresses indicating it was successfully delivered and signed for by "K. McKee" on March 17, 2012.<sup>10</sup> In addition, the Postal Service returned a certified receipt for the mailing to McKee's attorney, signed by him and indicating receipt of the Complaint on March 20, 2012.<sup>11</sup>

By serving McKee with the Complaint, Notice of Complaint, and Second Notice of Complaint by certified mail at his CRD address, Enforcement complied with the requirements of Rule 9134 and provided him with constructive notice that the Complaint had been filed.<sup>12</sup> The signed receipt for the delivery of the Complaint at McKee's CRD address, although illegible, and the other signed receipts that the Postal Service returned to Enforcement, strongly suggest that McKee received actual notice of the Complaint as well.

Nonetheless, McKee has failed to file an Answer or otherwise respond to the Complaint.<sup>13</sup> McKee has therefore defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.

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<sup>8</sup> Decl. ¶ 14.

<sup>9</sup> Decl. ¶ 16.

<sup>10</sup> Decl. ¶ 15.

<sup>11</sup> Decl. ¶ 17.

<sup>12</sup> *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at \*5 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at \*20 (9th Cir. Aug. 12, 1998)).

<sup>13</sup> Decl. ¶ 20.

### **C. McKee Engaged in Fraudulent Sales of Securities**

From February 2006 through April 2011, McKee, by knowingly making fraudulent misrepresentations and omissions, and employing the means and instrumentalities of interstate commerce and of the mails, induced a series of customers of his employers' firms to invest in securities related to real estate ventures.

#### **1. "Home Remodeling" Investments**

While McKee was employed at LPL,<sup>14</sup> he persuaded customer SS to invest \$74,000 in two investment contracts in exchange for a return of principal plus a fee to be paid within 90 days.<sup>15</sup> In connection with the first, in a series of telephone calls in February 2006, McKee induced SS to invest \$45,000. McKee told SS the funds would be used to the remodel a single-family home and that he would receive the principal plus a return of \$5,000.<sup>16</sup> In the telephone calls, McKee also falsely represented that if the terms of the investment contract were not met, SS would acquire ownership of the house.<sup>17</sup> McKee did not return SS's initial principal or pay the promised profit. When SS asked McKee about it, McKee replied, "Sometimes these things don't work out." Real estate records show that McKee owned the house and in February 2006 was offering it for sale.<sup>18</sup>

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<sup>14</sup> Compl. ¶ 13.

<sup>15</sup> Supp. Decl. ¶ 23. An "investment contract" is a security that, for the purposes of the Securities Act, is "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise." *SEC v. Howey*, 328 U.S. 293, 298-299 (1946).

<sup>16</sup> Supp. Decl. ¶¶ 24-25.

<sup>17</sup> Supp. Decl. ¶ 26.

<sup>18</sup> Supp. Decl. ¶¶ 27-28.

In March 2006, McKee made a series of telephone calls to induce SS to invest \$29,000 in the second investment contract. McKee represented the funds would be used to remodel another single-family home, and promised a return of principal plus a payment of \$3,000.<sup>19</sup>

McKee deposited the full amount of SS's second investment into a bank account he controlled.

McKee never returned any of the investment to SS and did not pay SS the promised \$3,000 fee.<sup>20</sup>

## **2. Uptown, Sam's, and Bedrocks Coffee**

In 2007, McKee acquired a fifty percent interest in a real estate development venture known as Uptown Development No. 1, LLC ("Uptown").<sup>21</sup> From 2007 through 2010, Uptown developed two shopping centers. In connection with funding these developments, McKee fraudulently solicited investments from customers of his employer firms, without disclosing his ownership interest in Uptown.<sup>22</sup> McKee falsely claimed in Uptown's promotional materials that he was an attorney and had provided legal advice to businesses throughout the Northwest United States. In fact, he had not graduated from law school and had not passed a bar examination.<sup>23</sup>

In 2009, two tenants of these shopping centers, Sam's Uptown, LLC ("Sam's") and Bedrocks Coffee, LLC ("Bedrocks") required additional financing.<sup>24</sup> McKee solicited customers of his employer Berthel Fisher to invest in these businesses. McKee misrepresented the terms of the investments; made false promises of high rates of return of eight to 12 percent; failed to disclose that he had a financial interest in the businesses; and failed to disclose that they were

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<sup>19</sup> Supp. Decl. ¶ 29.

<sup>20</sup> Supp. Decl. ¶¶ 31-33.

<sup>21</sup> Compl. ¶ 15.

<sup>22</sup> Compl. ¶ 16.

<sup>23</sup> Compl. ¶ 17.

<sup>24</sup> Compl. ¶ 22.

small, start-up companies experiencing financial difficulties, with inexperienced management, limited client bases, and no track record of success.<sup>25</sup>

In October 2009, McKee induced Berthel Fisher customer AS to invest \$48,000 in Bedrocks by falsely representing that it was a real estate investment trust.<sup>26</sup> McKee failed to inform her that it was a coffee shop experiencing financial difficulties, that it had no history of success, and that he had a financial interest in it.<sup>27</sup> Relying on McKee's misrepresentations and omissions, AS agreed to invest. On October 20, 2009, McKee's staff directed AS to a website purportedly enabling her to track her investment in Bedrocks. On October 22, 2009, McKee caused a wire transfer of \$48,000 from AS's bank account to Bedrocks.<sup>28</sup>

In January and March 2010, AS sent e-mails to McKee's staff to complain that she was unable to access information about the investment and to ask for a statement.<sup>29</sup> In March 2010, McKee prepared and presented to AS a summary of her investments falsely representing that Bedrocks had paid her a dividend of \$2,400.<sup>30</sup> In November or early December 2010, McKee left AS a voicemail message relating to her investment, and sent her an e-mail assuring her that he would call her to address her concerns.<sup>31</sup> AS lost her entire \$48,000 investment when Bedrocks filed for bankruptcy.<sup>32</sup>

In November 2009, McKee made a series of telephone calls to Berthel Fisher customer KK in which he falsely represented that Bedrocks was a viable business and that if she invested,

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<sup>25</sup> Compl. ¶ 23.

<sup>26</sup> Compl. ¶ 29.

<sup>27</sup> Supp. Decl. ¶ 35.

<sup>28</sup> Supp. Decl. ¶ 36.

<sup>29</sup> Supp. Decl. ¶ 37.

<sup>30</sup> Supp. Decl. ¶ 39; Compl. ¶ 30.

<sup>31</sup> Supp. Decl. ¶¶ 40-41.

<sup>32</sup> Compl. ¶ 30.

KK could earn 12 percent interest. McKee failed to disclose that Bedrocks was experiencing financial difficulties and that he was soliciting investments in order to strengthen its financial condition. Relying on McKee's misrepresentations and omissions, KK invested \$100,000 in Bedrocks on November 18, 2009. From then until Bedrocks filed for bankruptcy in November 2010, KK received only a single interest payment, and lost the principal.<sup>33</sup>

In October 2010, Berthel Fisher customer LK invested \$50,000 in Bedrocks. In a series of telephone calls to LK, McKee represented that the investment would earn eight percent interest and was a "good investment." He failed to disclose that Bedrocks was a coffee shop in financial distress, that he had an interest in the business, and that he was to receive \$10,000 of LK's investment as a "commission."<sup>34</sup> In the course of his fraudulent scheme, McKee sent LK a letter dated October 15, 2010, setting forth the terms of the investment contract and attached a "statement of Investment Account" documenting LK's investment.<sup>35</sup> Bedrocks filed for bankruptcy one month later without paying any interest, and LK lost the principal.<sup>36</sup>

### **3. Ventis Investment Properties, LLC**

In April 2011, McKee owned Ventis Investment Properties, LLC ("Ventis"), a real estate company that invested in local residential properties. McKee falsely represented to Morgan Stanley customer LK in telephone calls and text messages that Ventis was investing in assisted living facilities in Springfield, Oregon.<sup>37</sup> McKee also informed LK that Ventis had developed a housing project for seniors that had a 100 percent occupancy rate and a waiting list of

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<sup>33</sup> Compl. ¶ 31; Supp. Decl. ¶¶ 44-45.

<sup>34</sup> Supp. Decl. ¶¶ 18-19.

<sup>35</sup> Supp. Decl. ¶¶ 20-21.

<sup>36</sup> Compl. ¶ 35.

<sup>37</sup> Supp. Decl. ¶ 7.



prospective occupants.<sup>38</sup> McKee took LK to visit a local housing complex. He falsely claimed that Ventis had a role in developing the complex. He also showed LK a vacant parcel of land in Springfield, which he claimed was the location for another proposed housing project. In fact, McKee owned and was attempting to sell the parcel. McKee falsely represented that LK could receive a return of up to 20 percent annually by investing.<sup>39</sup>

LK invested \$100,000 in Ventis relying on McKee's representations. McKee deposited the funds into a bank account he controlled and used them for his own purposes.<sup>40</sup> In one instance, for example, McKee transferred approximately \$70,000 of LK's \$100,000 investment to another customer.<sup>41</sup>

These facts, as the Complaint alleges in its first cause of action, establish for the purposes of this default decision that McKee knowingly induced customers, by making material misrepresentations and omissions, through the means and instrumentalities of interstate commerce and the mails, to invest in securities relating to various real estate ventures, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010.

#### **D. McKee Converted Customer Funds**

During the relevant period, McKee misused and converted the funds he induced customers LK, SS, and KK to entrust to him for specific investments.

As noted above, in March 2006, customer SS gave McKee \$29,000 for an investment contract. Instead of investing the funds on SS's behalf, McKee deposited them into a bank

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<sup>38</sup> Compl. ¶ 40.

<sup>39</sup> Compl. ¶ 41.

<sup>40</sup> Compl. ¶¶ 40-43.

<sup>41</sup> Supp. Decl. ¶ 12.

account for a business he owned.<sup>42</sup> Account records reflect that McKee converted \$17,178.64 for his own personal and business purposes.<sup>43</sup>

In August and September 2008, McKee diverted \$68,215.36 of funds customer TM entrusted to him for investments. TM discovered the misuse of his funds in April 2011 and threatened McKee with legal action if McKee did not return the funds. To avoid legal action, McKee used \$68,215.36 of the \$100,000 he obtained from customer LK for the purpose of investing in Ventis to repay TM. McKee deposited the remainder of LK's Ventis investment into an account he controlled, and failed to return it to LK.<sup>44</sup>

In April 2007, McKee obtained \$400,000 from LPL customer KK to invest in Uptown. KK believed she would receive an annual rate of 12.5 percent interest from the investment. In December 2007, KK suffered a heart attack and, because of medical expenses, contacted McKee directing him to liquidate her investment. McKee told KK he could not do so immediately.<sup>45</sup> In February 2008, McKee directed Uptown to forward him two \$200,000 checks drawn on KK's Uptown account. McKee deposited the funds in a bank account he controlled. When he did so, the account had a balance of approximately \$35.00. By the end of January 2009, the balance was approximately \$500. McKee used the funds from KK's Uptown investment for his own personal and business expenses. These included the purchase of two cars for his children, entertainment expenses, medical and dental expenses, and payments to other customers he had induced to make investments. He also made numerous cash withdrawals. Even though KK has repeatedly requested McKee to return her investment, he has not repaid her.<sup>46</sup>

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<sup>42</sup> Supp. Decl. ¶¶ 30-31.

<sup>43</sup> Supp. Decl. ¶ 55.

<sup>44</sup> Supp. Decl. ¶¶ 50-52.

<sup>45</sup> Compl. ¶ 18.

<sup>46</sup> Supp. Decl. ¶¶ 57-61.

These facts, as alleged in the Complaint's second cause of action, establish for the purposes of this Default Decision that McKee converted customer funds to his own use, in violation of NASD Rules 2330 and 2110, and FINRA Rules 2150 and 2010.

**E. McKee Made an Unsuitable Investment Recommendation**

In 2009, one of McKee's customers was a small Oregon church ("EB Church") with no investment experience that was interested in a conservative investment with limited risk to generate income for operational expenses. In October 2009, McKee recommended that EB Church invest \$100,000 in Bedrocks.<sup>47</sup> As noted above, Bedrocks was a high-risk, start-up venture.<sup>48</sup> To make the recommendation appear suitable, McKee placed false suitability information in the church's account documents, relating to its assets, investment objectives, and risk tolerance.<sup>49</sup> For example, McKee falsely indicated on the church's account documents that it had 35 years of experience investing in stocks, bonds, mutual funds and annuities. Additionally, although the church had only \$5,000 in its checking account and an annual income of only \$100,000, McKee indicated on account documents that its estimated net worth was \$250 million.<sup>50</sup> EB Church lost its entire investment when Bedrocks filed for bankruptcy in November 2010.<sup>51</sup>

These facts, as alleged in the Complaint's third cause of action, establish for the purposes of this Default Decision that McKee made an unsuitable investment recommendation to the EB Church, in violation of NASD Rule 2310 and FINRA Rule 2010, resulting in significant financial harm to the church.

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<sup>47</sup> Compl. ¶ 24.

<sup>48</sup> Compl. ¶¶ 87-88.

<sup>49</sup> Compl. ¶ 89.

<sup>50</sup> Compl. ¶ 26.

<sup>51</sup> Compl. ¶ 90.

**F. McKee Made False Statements to his Firm**

In 2009 and 2010, McKee's employer, member firm Berthel Fisher, asked him to submit annual Registered Representative Questionnaires. The questionnaires asked him to disclose his outside business activities and to indicate whether he had obtained written approval for them by submitting an Outside Business Activities form. McKee failed to disclose to Berthel Fisher that he held outside interests in Uptown, Sam's, and Bedrocks, and that he was actively soliciting firm customers to invest in these ventures. He also falsely answered "yes" to the question asking if he had obtained the firm's written approval for his outside business activities.<sup>52</sup>

These facts, as alleged in the fourth cause of action, establish for the purposes of this Default Decision that McKee made false statements to his employer firm, in violation of FINRA Rule 2010.

**G. McKee Engaged in Private Securities Transactions**

NASD Rule 3040(a) states: "No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule." Section (b) lays out the steps a representative must take in order to participate properly in a private securities transaction. In pertinent part, it requires the person to give written notice to his firm, "describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction." The Securities and Exchange Commission ("SEC") has held that failure to provide these particulars in a written notice to one's firm violates Rule 3040.<sup>53</sup>

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<sup>52</sup> Compl. ¶¶ 28, 93.

<sup>53</sup> *Anthony H. Barkate*, Exchange Act Rel. No. 49542, 2004 SEC LEXIS 806, at \*2 (Apr. 8, 2004), *aff'd*, 235 F. App'x. 892 (9th Cir. 2005); *Dep't of Enforcement v. Keyes*, No. C02040016, 2005 NASD Discip. LEXIS 9, at \*13 (N.A.C. Dec. 28, 2005).

Rule 3040(e) defines “private securities transaction” to include “any securities transaction outside the regular course or scope of an associated person’s employment with a member, including ... new offerings of securities which are not registered” with the SEC.<sup>54</sup>

From February 2006 through April 2011, McKee recommended and solicited investments in real estate ventures including Uptown, Sam’s, Bedrocks, and Ventis from customers SS, AS, KK, and LK. He did not notify or obtain prior approval from his employer firms.<sup>55</sup>

These facts, as alleged in the Complaint’s fifth cause of action, establish that McKee engaged in private securities transactions in violation of NASD Rules 3040 and 2110, and FINRA Rule 2010.

**H. McKee Failed to Produce Documents and Information Requested by FINRA**

Beginning on April 25, 2011, under the authority of Rule 8210, FINRA staff requested that McKee provide copies of bank and credit union statements for various personal accounts and accounts relating to his brokerage business, to Uptown and Ventis, and other records relevant to the investigation.<sup>56</sup> FINRA staff sent the requests to McKee or, when informed that McKee had retained counsel, to the attorney representing him at the time of the request. The staff sent a total of three letters by certified mail, on April 25, September 20, and October 18, 2011, one to McKee directly and two to his counsel.<sup>57</sup> In addition, the staff followed up with numerous e-mails repeating the requests for the records and reminding McKee of his obligation under Rule 8210 to comply with previous requests.<sup>58</sup> Through counsel, McKee provided several partial,

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<sup>54</sup> *Dep’t of Enforcement v. Nugent*, No. C01040010, 2006 NASD Discip. LEXIS 1, at \*11 (N.A.C. Feb. 23, 2006).

<sup>55</sup> Compl. ¶¶ 36, 37, 96.

<sup>56</sup> Compl. ¶ 46.

<sup>57</sup> Compl. ¶¶ 47, 57, 62.

<sup>58</sup> Compl. ¶¶ 49, 51, 52, 55, 60, 61.

late responses to the document requests, but failed to comply with the 25 separate document requests contained in the letters and the e-mails.<sup>59</sup>

These facts, as alleged in the Complaint's sixth cause of action, establish for the purposes of this Default Decision, that McKee failed to provide documents and information requested by FINRA staff, in violation of FINRA Rules 8210 and 2010.

#### **I. McKee Gave Untruthful Testimony**

On June 14 and 15, 2011, McKee appeared at an on-the-record interview conducted by FINRA staff pursuant to Rule 8210. When questioned about his solicitation of investments in Uptown, Sam's, and Bedrocks, McKee repeatedly provided false testimony. For example, McKee asserted that only he and his business partner invested in Uptown, and denied that he solicited his brokerage clients to invest.<sup>60</sup> McKee falsely claimed that he did not know what Sam's was, and claimed he did not think it existed, even though he personally solicited one of his Berthel Fisher clients, an 81-year old retiree, to invest over \$59,000 in Sam's.<sup>61</sup> McKee also falsely asserted that he did not solicit customers to invest in Bedrocks, and specifically denied recommending that Berthel Fisher customer AS invest \$48,000 in it.<sup>62</sup> With these false statements, McKee endeavored to mislead and deceive FINRA staff investigating his misconduct.

These facts, as alleged in the Complaint's seventh cause of action, establish for the purposes of this Default Decision that McKee willfully testified falsely during his sworn on-the-record interview, in violation of FINRA Rules 8210 and 2010.

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<sup>59</sup> Compl. ¶¶ 48, 50, 54, 99; Schedule A.

<sup>60</sup> Compl. ¶¶ 65, 66.

<sup>61</sup> Compl. ¶¶ 32, 67.

<sup>62</sup> Compl. ¶¶ 29, 68.

### III. Sanctions

Enforcement contends that McKee is “unfit to work in the securities industry” because he repeatedly betrayed the trust of his customers and exploited them for personal gain.

Accordingly, Enforcement recommends that the appropriate sanction in this case is a bar for each cause of action in the Complaint.<sup>63</sup> Given the egregiousness of McKee’s course of misconduct as described in the Complaint, extending from February 2006 through June 2011, and the seriousness of the rule violations each cause of action describes, Enforcement’s recommendation is appropriate.<sup>64</sup>

As Enforcement notes, a number of the Principal Considerations in Determining Sanctions listed in FINRA’s Sanction Guidelines, which are applicable to all rule violations, support the finding that McKee’s misconduct is egregious. McKee engaged in a pattern of misconduct<sup>65</sup> over a period of years,<sup>66</sup> attempted to conceal his misconduct from his firm and regulators;<sup>67</sup> inflicted substantial economic injury to members of the investing public;<sup>68</sup> attempted through false testimony to hinder FINRA’s investigation;<sup>69</sup> committed his wrongdoing willfully and intentionally;<sup>70</sup> and purposefully sought and obtained significant financial gain,<sup>71</sup> through numerous and often large transactions.<sup>72</sup>

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<sup>63</sup> Default Motion, at 12.

<sup>64</sup> Enforcement does not request an order of restitution. Trambley Decl. ¶ 29; Supp. Decl. ¶¶ 63-64; Default Motion at 13.

<sup>65</sup> Principal Consideration No. 8, *FINRA Sanction Guidelines* at 6 (2011), available at [www.finra.org/oho](http://www.finra.org/oho) (then follow “Enforcement” hyperlink to “Sanction Guidelines”).

<sup>66</sup> Principal Consideration No. 9, *Guidelines* at 6.

<sup>67</sup> Principal Consideration No. 10, *Guidelines* at 6.

<sup>68</sup> Principal Consideration No. 11, *Guidelines* at 6.

<sup>69</sup> Principal Consideration No. 12, *Guidelines* at 7.

<sup>70</sup> Principal Consideration No. 13, *Guidelines* at 7.

<sup>71</sup> Principal Consideration 17, *Guidelines* at 7.

<sup>72</sup> Principal Consideration 18, *Guidelines* at 7.

**A. Fraudulent Sales of Securities**

The Guidelines recommend a bar for egregious fraudulent misrepresentations and omissions of fact.<sup>73</sup> McKee fabricated patently false representations and intentionally omitted material facts to defraud four customers of more than \$370,000. No mitigation exists. A bar is necessary to protect the investing public and deter McKee and others from similar fraudulent misconduct.

**B. Conversion**

The Guidelines recommend a bar for conversion of customer funds regardless of the amount converted.<sup>74</sup> Over the course of six years, McKee converted more than \$650,000 from four customers. In one instance, McKee converted funds of one customer to reimburse another who was threatening to sue McKee for misusing his funds. In another instance, McKee converted \$400,000 from a customer and used the money for a wide variety of personal and business expenditures, despite the customer's repeated requests to return her funds because she needed to pay emergency medical expenses. The record contains no mitigating facts. A bar is appropriate to deter such egregious misconduct by McKee and others.

**C. Unsuitable Recommendation**

The Guidelines recommend consideration of a bar in egregious cases when a respondent makes unsuitable recommendations. In this case, McKee took advantage of a small church with no investment experience that was seeking a low-risk, income-generating investment to pay church expenses. Without informing EB Church of his ownership interest in it, McKee recommended the church invest \$100,000 in a risky venture, and the church lost its entire

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<sup>73</sup> *Guidelines* at 90.

<sup>74</sup> *Guidelines* at 36.



investment. No mitigating factors are present. To deter such egregious misconduct, a bar is necessary.

#### **D. False Statements to the Firm**

When McKee misled his employer firm by falsely answering questions on two successive annual compliance questionnaires, and thereby concealed his outside business activities, his conduct was analogous to falsifying records.<sup>75</sup> In egregious cases of record falsification, the Guidelines recommend consideration of a bar.<sup>76</sup> Because of the willful and intentional nature of his deception, and in the absence of mitigation, a bar is appropriate to deter McKee and others from similar misconduct.

#### **E. Selling Away**

For engaging improperly in private securities transactions, the Guidelines direct adjudicators to assess the quantitative extent of the selling away transactions, including the amount of money and number of customers, and recommend imposing a suspension of 12 months to a bar when sales exceed \$1 million.<sup>77</sup> McKee in this case solicited investments away from his employer firms from seven customers, for a total of approximately \$880,000. Although the total is less than \$1 million, it is a significant dollar amount, and other aggravating factors support Enforcement's recommendation of a bar for the selling away violations.

The Guidelines also direct adjudicators to review the principal considerations and general principles applicable to all violations. Doing so discloses that the following additional aggravating factors are applicable here: (i) McKee failed to disclose to his customers that he stood to profit from their investments; (ii) McKee inflicted financial injury on the investing

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<sup>75</sup> *Dep't of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at \*26 (N.A.C. May 13, 2011), *aff'd*, Exchange Act Rel. No. 66467, 2012 SEC LEXIS 5620 (Feb. 24, 2012).

<sup>76</sup> *Guidelines* at 37.

<sup>77</sup> *Guidelines* at 14.

public; (iii) McKee solicited customers of his employer firms for the outside sales; (iv) McKee sold away directly to customers; and (v) McKee concealed his outside selling activities from his employer firms.<sup>78</sup>

Taking all of these circumstances into account, a bar is the appropriate sanction to deter McKee and others from such egregious selling away.

#### **F. Rule 8210 Violations**

The Guidelines state that a bar is the standard sanction to impose when a respondent makes a partial but incomplete response to a Rule 8210 request for information, unless the respondent is able to demonstrate that the information he supplied “substantially complied with all aspects of the request.”<sup>79</sup> There is no such showing here. Enforcement characterizes its requests for business records of McKee’s selling away transactions and for information relating to the customers involved as being “at the core of FINRA’s regulatory inquiry,”<sup>80</sup> and McKee failed substantially to provide the information FINRA sought in numerous itemized requests.

As for McKee’s untruthful testimony, the Guidelines focus adjudicators on the importance to FINRA of the information requested.<sup>81</sup> In this case, McKee deceptively responded to questions about his private securities transactions involving Uptown, Sam’s, and Bedrocks. McKee’s false statements relating to his outside sales of investments and his involvement in the entities he sought to benefit constituted an intentional effort to stymie FINRA’s investigation. There are no mitigating factors to consider.

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<sup>78</sup> Principal Considerations Nos. 5, 7, 8, 11, 13.

<sup>79</sup> *Guidelines* at 33.

<sup>80</sup> Default Motion at 17.

<sup>81</sup> *Guidelines* at 33.

It is axiomatic that Rule 8210 is “at the heart of the self-regulatory system for the securities industry.”<sup>82</sup> Delay and neglect in responding to Rule 8210 requests for documents, information, and testimony “undermine the ability of the NASD to conduct investigations and thereby protect the public interest.”<sup>83</sup> Similarly, providing false and misleading information “subverts FINRA’s ability to carry out its regulatory functions.”<sup>84</sup>

For all of the foregoing reasons, McKee’s failure to provide complete responses to Rule 8210 requests for documents and information, and his untruthful testimony in an on-the-record interview conducted pursuant to Rule 8210, each merit a bar to deter McKee and others from similar misconduct designed to frustrate FINRA’s ability to fulfill its investigatory responsibilities.

#### **IV. Conclusion**

Respondent James Scott McKee is barred for: (i) knowingly and recklessly inducing customers to make investments by making material misrepresentations and omissions, through the use of the means and instrumentalities of interstate commerce and of the mails, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, NASD Conduct Rules 2120 and 2110, and FINRA Conduct Rules 2020 and 2010; (ii) converting customer funds, in violation of NASD Rules 2330 and 2110, and FINRA Rules 2150 and 2010; (iii) making an unsuitable investment recommendation, in violation of NASD Rules 2310 and 2110, and FINRA Rule 2010; (iv) making false statements to his employer FINRA member firm, in violation of FINRA Rule 2010; (v) engaging in private securities transactions without notifying or obtaining prior

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<sup>82</sup> *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at \*13 (Nov. 14, 2008).

<sup>83</sup> *Id.* at \*13-14 (quoting *Barry C. Wilson*, 52 S.E.C. 1070, 1075 (1996)).

<sup>84</sup> *Dep’t of Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at \*64 (N.A.C. May 1, 2012) (quoting *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at \*32 (Aug. 22, 2008)).

approval from his employer firm, in violation of NASD Rules 3040 and 2110, and FINRA Rule 2010; (vi) failing to produce documents and information requested by FINRA staff, in violation of FINRA Rules 8210 and 2010; and (vii) testifying falsely during an on-the-record interview, in violation of FINRA Rules 8210 and 2010.

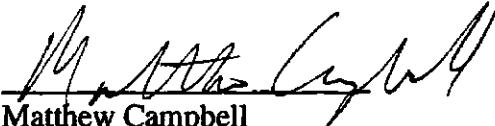
Enforcement elected not to request an order of restitution, primarily because it anticipates that McKee may file for bankruptcy.<sup>85</sup> Whether he will do so, of course, is unknowable. It is therefore appropriate under the circumstances of this case to order McKee to pay restitution to the customers who suffered quantifiable loss of investments they made as a result of McKee's fraudulent sales activities, conversion of funds, and unsuitable recommendations. Therefore, McKee is ordered to repay the following customers the sums they invested and lost, plus interest at the rate set in the Internal Revenue Code at 26 U.S.C. 6621(b)(2):<sup>86</sup> (i) \$45,000 to customer SS, with interest from March 1, 2006, until paid; (ii) \$29,000 to customer SS, with interest from April 1, 2006, until paid; (iii) \$400,000 to customer KK, with interest from March 1, 2007, until paid; (iv) \$100,000 to customer KK, with interest from November 18, 2009, until paid; (v) \$100,000 to EB Church, with interest from October 31, 2009, until paid; (vi) \$48,000 to customer AS, with interest from October 22, 2009, until paid; \$50,000 to customer LK, with interest from November 1, 2010, until paid; (vii) and \$100,000 to customer LK, with interest from March 1, 2011, until paid.

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<sup>85</sup> Enforcement explains in its Declaration that McKee's attorney represented that McKee is subject to multiple legal actions seeking damages and would file for bankruptcy. McKee did so on May 9, 2012, in the U.S. Bankruptcy Court in the District of Oregon. However, on June 1, 2012, the court entered an Order of Dismissal and Administratively Closing the Case because McKee had failed to file documents timely. Enforcement represents that the dismissal is without prejudice and McKee may move to reopen the matter at any time. Trambley Decl. ¶ 29; Supp. Decl. ¶¶ 63-64; Default Motion at p. 13.

<sup>86</sup> The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. In the instances in which the Complaint establishes the exact dates of customers' investments to McKee, interest shall accrue from those dates. In the other instances, in which the Complaint establishes only the month the customers made their investments, interest shall accrue from the first of the following month. An Addendum to this Decision identifies the customers. The Addendum will be served only on the parties.

If this default decision becomes FINRA's final action in this disciplinary proceeding, the bars shall become effective immediately.



Matthew Campbell  
Hearing Officer

**Copies to:**

James S. McKee (*via overnight courier and first-class mail*)  
Gregory Firehock, Esq. (*via e-mail and first-class mail*)  
C. Anthony Trambley, Esq. (*via e-mail*)  
David R. Sonnenberg, Esq. (*via e-mail*)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

James Scott McKee  
(CRD No. 3222516),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2010025217901

Hearing Officer:

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Beginning in approximately February 2006 and continuing through September 2011 (the "relevant period"), James Scott McKee defrauded brokerage customers and others by persuading them through material misrepresentations and omissions to invest in various undisclosed outside real estate ventures in which he had a direct or indirect financial interest. McKee's victims, each of whom placed their trust in McKee, included an 81-year old retiree, a local church, an owner of a small office supply company and other unsophisticated investors seeking conservative investments who believed, based upon McKee's fraudulent misrepresentations and omissions, that their investments were in fact conservative.
2. McKee's misrepresentations and omissions included promising unreasonably high rates of return unsupported by the underlying businesses, hiding the precarious financial condition of the underlying businesses, lying about how he would use the funds

invested, lying about the nature and terms of particular investments, falsely claiming to be an attorney, failing to disclose that he had an interest in the ventures for which he solicited investments, and failing to disclose the high risk of the investments.

3. McKee also improperly used or converted customer funds for his own use and benefit, or for the benefit of others. McKee induced one customer to give him money, telling the customer that it would be used to invest in one of his real estate ventures. But rather than invest the customer's funds, McKee used the funds to pay off another customer who had threatened legal action against McKee for wrongfully taking funds in connection with an earlier transaction.
4. McKee also recommended that a local church invest in a local coffee shop in which McKee had a business interest, knowing that this investment was inconsistent with the church's stated investment objectives and financial needs. At the time of McKee's recommendation, the church sought to make a safe, conservative investment rather than invest in a relatively high-risk start-up venture. To prevent his firm and regulators from discerning the unsuitable nature of the investment, McKee falsified customer suitability information on the church's account documents.
5. McKee also lied to an employing member firm, falsely indicating in a series of annual questionnaires that he had disclosed all of his outside business activities, when in fact he had failed to disclose certain real estate ventures and his ongoing solicitation of firm customers to invest in these ventures.
6. During FINRA's investigation, McKee serially failed to cooperate with FINRA staff and lied to FINRA staff during his sworn on-the-record testimony. He failed to respond timely or completely to FINRA's repeated requests made pursuant to FINRA Rule

8210 for information and documents. During his on-the-record examination, McKee falsely testified that he did not solicit brokerage customers to invest in certain real estate ventures in which he had a financial interest.

7. McKee's conduct violated myriad federal securities laws and FINRA rules: Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rule 2120 and FINRA Rule 2020 (which prohibit material misrepresentations and omissions in connection with the sale of securities); NASD Rule 2330 and FINRA Rule 2150 (which prohibit improper use and conversion of customer funds); NASD Rule 2310 (which prohibits unsuitable investment recommendations); FINRA Rule 2010 (which requires high standards of commercial honor and just and equitable principles of trade); NASD Rule 3040 (which prohibits engaging in private securities transactions without prior approval from the employing member firm); and FINRA Rule 8210 (which requires FINRA members to cooperate with a FINRA investigation).<sup>1</sup>

#### **RESPONDENT AND JURISDICTION**

8. McKee was first associated with a FINRA member in April, 1999 when he became associated with a FINRA member firm where he obtained his Series 6 (May 1999), Series 7 (February 2000) and Series 24 (February 2001). He maintained these licenses at his employing member firms, until December 2010, at which point he was registered at his employing firm solely as a Series 7.
9. From November 2002 to September 2008, McKee was associated as a registered representative and principal with LPL Financial Corporation ("LPL"). From September

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<sup>1</sup> Each of the violations herein also constituted a violation of FINRA's requirement that a member "observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 2110 is effective as to conduct committed prior to December 15, 2008; FINRA Rule 2010 is effective as to conduct committed on or after December 15, 2008.



2008 to November 2010, McKee was associated as a registered representative and principal with Berthel, Fisher & Company Financial Services, Inc. ("Berthel Fisher").

10. From December 2010 to September 2011, McKee was associated as a registered representative and principal with Morgan Stanley Smith Barney ("Morgan Stanley"). On September 30, 2011, Morgan Stanley discharged McKee for persuading a firm customer to invest in an outside business venture owned by McKee without notifying or obtaining prior approval from the firm. McKee has not been registered or associated with a FINRA member since he was discharged by Morgan Stanley.
11. McKee remains subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of McKee's registration with a FINRA member on October 5, 2011; and (2) the Complaint charges McKee with misconduct committed while he was registered or associated with a FINRA member.

#### **FACTUAL BACKGROUND**

##### ***McKee Fraudulently Induced Brokerage Customers and Others to Invest In His Private Real Estate Ventures and Failed to Obtain Prior Approval to Solicit These Outside Investments***

12. Beginning in early 2006 and continuing through September 2011, McKee persuaded brokerage customers and others, through material misrepresentations and omissions, to invest in various outside real estate ventures in which he had a direct or indirect financial interest. With respect to these private securities transactions, McKee failed to notify or obtain prior approval from his employing firms.

### ***McKee's Rental Properties***

13. In February 2006, while McKee was employed at LPL, he persuaded firm customer SS to invest \$45,000 in a local residential property by falsely promising to return the principal plus a flat fee of \$5,000 in 90 days. At the time, SS had no prior investment experience and was seeking conservative investments. To induce the investment, McKee falsely told SS that the money was to be used to remodel the house, so that the property could be sold or "flipped" for a profit. McKee did not provide SS documentation for the investment. The house was not sold within 90 days and McKee failed to pay SS the promised \$5,000 fee or return any of the principal.
14. In a separate instance, in March 2006, McKee persuaded SS to invest \$29,000 in another local residential property, again by falsely promising to return the principal plus a flat fee of \$3,000 in 90 days. McKee had SS make the check out to McKee. As with the earlier investment, McKee did not provide SS documentation for the investment and failed to pay SS the promised fee or return any of the principal.

### ***Uptown Development No. 1, LLC***

15. In 2007, McKee became co-owner of Uptown Development No. 1, LLC ("Uptown"), a real estate development venture in Eugene, Oregon. McKee owned half the shares of Uptown. His primary role was to raise private investment at a time when real estate ventures were having difficulty raising money.
16. From 2007 through 2010, Uptown developed two shopping centers: Coburg Station and Uptown Plaza. To fund these ventures, McKee solicited investments from his clients at LPL, and later Berthel Fisher, without notifying or obtaining prior approval from the firm and without disclosing to investors that he was an owner of Uptown.

17. To induce prospective investors, McKee falsely claimed in Uptown's promotional materials and elsewhere that he was an attorney who had provided legal advice to high-profile businesses throughout the Northwest, when in fact he never graduated from law school and never passed a bar examination.
18. In April 2007, McKee persuaded LPL customer KK to invest \$400,000 in Uptown in return for interest at an annual rate of 12.5 percent paid monthly. McKee did not notify or obtain approval from LPL for this outside investment. In December 2007, KK had a heart attack, incurring significant medical expenses. Accordingly, she contacted McKee seeking to liquidate her Uptown investment. McKee, fully aware of KK's need for money because of her medical issues, told her the money was tied up and that it would take time before it could be released.
19. In February 2008, and unbeknownst to KK, McKee caused Uptown to write two checks, each for \$200,000 made out to McKee, which McKee deposited in a personal bank account. McKee converted these funds to his own use, even though he told KK that the funds would be invested in Uptown and McKee knew that KK required these funds to help pay her mounting medical bills. KK continued to request McKee return her investment, only to be met with further delay. As of the date of this complaint, McKee has not returned KK's investment.
20. In August 2008, McKee solicited TM, a customer of Berthel Fisher and the owner of a local office supply company, to invest approximately \$100,000 in Uptown, without notifying or obtaining prior approval from the firm. McKee had TM make out a check for \$202,632 payable to Uptown. Uptown transferred \$100,000 of this amount to McKee, which he deposited in a bank account he controlled. In September 2008,

McKee used \$31,748.64 of that \$100,000 to purchase a cashier's check, which was used to pay an insurance premium for TM. McKee kept the remaining \$68,215.36 until April 2011 when TM threatened McKee with legal action.

21. In a letter to McKee dated April 7, 2011, TM, through counsel, accused McKee of failing to disclose to TM the terms of the unsecured Uptown note or that McKee was an owner of Uptown. After TM threatened legal action, McKee repaid TM \$68,215.36 using funds that he had misappropriated from another customer, LK.

***Sam's Uptown, LLC and Bedrocks Coffee, LLC***

22. In 2009, certain tenants at both Uptown Plaza and Coburg Station began experiencing financial difficulties and required additional financing: Sam's Uptown, LLC ("Sam's"), a sports bar leasing space at Uptown Plaza, and Bedrocks Coffee, LLC ("Bedrocks"), a coffee shop leasing space at Coburg Station.
23. To assist Sam's and Bedrocks, and without notifying or obtaining prior approval from Berthel Fisher, McKee began soliciting customers of Berthel Fisher to invest directly in these companies. McKee induced investors with misrepresentations about the terms of the investments and with the promise of high rates of return ranging from 8 to 12 percent. In soliciting these investments, McKee failed to disclose that he had a financial interest in these ventures, that the ventures were experiencing financial difficulties or that the ventures were small, start-up companies with inexperienced management, a limited client base and no track record of success.
24. In October 2009, McKee persuaded a local church with no investment experience to invest \$100,000 in Bedrocks, without notifying or obtaining prior approval from Berthel Fisher. At the time of McKee's recommendation, the church informed McKee

it was seeking a conservative investment with limited risk primarily to generate income for incidental operational expenses. To induce the investment, McKee falsely informed the church that Bedrocks was part of a larger venture with other planned locations. McKee failed to inform the church that he had a business interest in the venture, that Bedrocks was experiencing financial difficulties, or that it was a small, start-up venture with uncertain prospects for success.

25. To camouflage the unsuitable nature of the recommendation, McKee provided false information on the church's account forms concerning the church's assets, risk tolerance, investment objective, time horizon and investment experience.
26. Specifically, McKee falsely indicated on the church's account forms (i) that its estimated net worth was \$250 million, when in fact it maintained only \$5,000 in its checking and savings accounts and had an annual income of only \$100,000 per year; (ii) that its risk tolerance was "moderate," when in fact it was "conservative;" (iii) that its investment objective was "growth," when in fact it was "income;" (iv) that its time horizon was over 10 years, when in fact it was under five years; and (v) that it had 35 years experience investing in stocks, bonds, mutual funds and annuities, when in fact, prior to October 2009, the church had no investing experience at all.
27. McKee prepared a schedule of the church's investments showing values as of August 2010. In this spreadsheet, McKee falsely recorded that the church gained \$5,833.33 for its investment in Bedrocks. In fact, the church never realized any gain from its investment in Bedrocks and lost all of the \$100,000 invested when Bedrocks filed for bankruptcy in November 2011.

28. McKee also lied to Berthel Fisher regarding his outside business activities. In Registered Representative Questionnaires for 2009 and 2010, McKee was asked whether he had disclosed all of his outside business activities and whether he had obtained written approval for these outside activities through submission of an Outside Business Activities form. McKee falsely answered "yes," even though he had failed to disclose to Berthel Fisher his outside interests in Uptown, Sam's and Bedrocks or his solicitation of firm customers to invest in these ventures.
29. In October 2009, McKee persuaded customer AS to invest \$48,000 in Bedrocks, without notifying or obtaining prior approval from Berthel Fisher. To induce AS to invest, McKee falsely described Bedrocks as a "real estate investment trust," rather than a small, local coffee shop. McKee did not provide AS with any documentation describing or evidencing this investment.
30. In March 2010, McKee provided AS a schedule of investments, prepared by McKee, which falsely showed her investment in Bedrocks had paid a "dividend" of \$2,400. In fact, Bedrocks never paid AS any interest for her investment in Bedrocks and she lost all of her \$48,000 investment when Bedrocks filed for bankruptcy.
31. In November 2009, McKee induced customer KK to invest \$100,000 in Bedrocks promising that she would earn 12 percent interest, without notifying or obtaining prior approval from Berthel Fisher. To induce this investment, McKee falsely told KK that she would receive an interest payment every month, which she could use for needed living expenses. McKee also told KK that he would not recommend the investment if Bedrocks was not a viable business. He failed to disclose to KK that Bedrocks was experiencing financial difficulties or that, to bolster the company's financial situation,

he was soliciting other customers to invest in the venture. From November 2009 to November 2010, when Bedrocks filed for bankruptcy, Bedrocks paid KK only one interest payment. Bedrocks also failed to return any of KK's \$100,000 investment.

32. In April 2010, McKee persuaded Berthel Fisher customer FL, an 81-year old retiree, to invest \$59,078.66 in Sam's promising that he would earn 10 percent interest, without notifying or obtaining prior approval from Berthel Fisher. To induce this investment, McKee falsely told FL that the investment was safe because it was secured by the bar's equipment. McKee also falsely told FL that he could recover the investment at any time, when in fact FL had to wait five years to redeem his investment. McKee failed to disclose that he had an interest in the venture or that it was experiencing financial difficulties.
33. Throughout 2010, McKee experienced financial difficulties of his own, including mounting personal debts.
34. In October 2010, McKee persuaded customer LK to invest \$50,000 in Bedrocks promising that LK would earn 8 percent interest, again without notifying or obtaining prior approval from Berthel Fisher.
35. To satisfy his need for ready cash, and unbeknownst to LK, McKee demanded the owner of Bedrocks kick-back \$10,000 of the \$50,000 investment. McKee did not tell LK that he was to receive \$10,000 personally from her investment. McKee also failed to inform LK that he had an interest in Bedrocks or that Bedrocks was experiencing financial difficulties. Only one month after McKee solicited the investment, Bedrocks filed for bankruptcy, having failed to pay LK any interest and having failed to return any of her \$50,000 investment.

36. On November 18, 2010, Berthel Fisher permitted McKee to resign for soliciting Berthel Fisher customers to invest in Uptown, Sam's and Bedrocks, without notifying or obtaining prior approval from the firm.
37. In December 2010, McKee joined Morgan Stanley where he continued to solicit customers to invest in McKee's outside business interests.

***Ventis Investment Properties, LLC***

38. As of April 2011, McKee owned a 100 percent interest in Ventis Investment Properties, LLC ("Ventis"), a real estate company which invested in local residential properties.
39. In April 2011, McKee solicited LK, at the time a customer of Morgan Stanley, to invest \$100,000 in Ventis, without notifying or obtaining prior approval from Morgan Stanley.
40. To induce LK's investment in Ventis, McKee falsely told LK that Ventis invested in assisted living facilities in Springfield, Oregon, when in fact the company owned only two properties, a small office building and a small undeveloped parcel of land. McKee also falsely told LK that Ventis had developed a similar senior housing project that enjoyed 100 percent occupancy with a waiting list of seniors hoping to enjoy the project's moderate prices. No such housing project exists.
41. McKee went so far as to take LK on a tour of a local housing complex, falsely claiming to LK that Ventis had a role in developing it. McKee also showed LK a parcel of empty land in Springfield, Oregon, falsely claiming it was the location upon which he planned to build the housing project. In fact, at the time McKee was trying to sell the



land. McKee also falsely told LK that her investment in Ventis would pay a consistent return based upon rents, up to 20 percent per year.

42. Relying on these misrepresentations, LK gave McKee a \$100,000 cashier's check made out to Ventis. McKee endorsed the check and deposited the \$100,000 into a bank account he controlled. Despite LK's repeated requests, McKee did not provide LK with any documentation for the investment. Eventually, LK demanded McKee return the \$100,000 investment, which McKee refused to do.
43. McKee used LK's \$100,000 investment for purposes other than Ventis. Without informing LK, McKee used most of LK's \$100,000 to pay off TM, a customer of McKee whom McKee had induced to invest in Uptown and who was threatening McKee with legal action for wrongfully taking \$68,215.36 (as described in paragraphs 20-21 herein). McKee kept the balance of LK's investment for his own use.
44. On September 30, 2011, Morgan Stanley discharged McKee after it learned that he had solicited LK to invest in Ventis, and had personally accepted LK's funds, without notifying or obtaining prior approval from the firm.

***McKee Failed to Cooperate with FINRA Staff and Lied to FINRA staff  
During His Sworn On-the-Record Testimony***

45. As detailed below, McKee failed to produce documents and information requested by FINRA staff pursuant to FINRA Rule 8210. During McKee's on-the-record examination, he lied to FINRA staff, falsely claiming that he did not solicit customers to invest in Uptown, Sam's or Bedrocks.

***McKee Failed to Produce Documents and Information***

46. As set forth on the attached Schedule A, McKee failed, despite repeated requests under FINRA Rule 8210, to produce certain documents and information including, among other things, personal bank records, bank records relating to his brokerage business and bank records relating to Uptown and Ventis. McKee also failed to provide certain loan applications concerning Uptown Plaza and Coburg Station, and failed to provide written explanations of suspicious financial transactions concerning investments he solicited in Uptown and Ventis.
47. On April 25, 2011, FINRA staff sent a letter to McKee requesting, pursuant to FINRA Rule 8210, certain documents and information. This letter was sent by certified mail return receipt requested to his last residential address as reflected in the Central Registration Depository ("CRD").
48. By letters dated May 20 and June 2, 2011, McKee, through counsel, produced to the staff certain documents and information in partial response to the staff's April 25, 2011 requests. McKee, however, without explanation, failed to produce, among other things, most of the bank records requested on April 25, 2011.
49. On July 14, 2011, FINRA staff sent a letter to counsel for McKee, by email, requesting for a second time that, pursuant to FINRA Rule 8210, McKee produce bank records first requested on April 25, 2011. In its July 14, 2011 letter, the staff further requested that, pursuant to FINRA Rule 8210, McKee provide a written description of the steps taken by him to obtain the requested bank records.
50. By emails dated July 14, July 20 and July 28, 2011, counsel for McKee produced additional documents in partial response to FINRA's April 25, 2011 request, but again

failed to produce requested bank records and failed to provide a written description of McKee's efforts to obtain such records.

51. On August 5, 2011, FINRA staff sent a letter to McKee's counsel, by email, requesting for a third time that, pursuant to FINRA Rule 8210, McKee produce certain bank records first requested on April 25, 2011. In its August 5, 2011 letter, the staff requested for a second time that, pursuant to FINRA Rule 8210, McKee provide a written description of the steps taken by him to obtain the requested bank records.
52. By separate letter dated August 5, 2011, sent to McKee's counsel by email, FINRA staff requested that, pursuant to FINRA Rule 8210, McKee produce certain documents and information concerning loan documents for certain of McKee's ventures, and certain additional bank records.
53. By email dated August 10, 2011, counsel for McKee acknowledged the delay in responding to FINRA's requests but stated that McKee was recovering from adult chicken pox and was hampered by "other responsibilities" and the "very expensive process" in responding to FINRA requests.
54. By letter dated August 11, 2011, counsel for McKee produced additional documents in partial response to FINRA's April 25, 2011 request, but again failed to produce certain of the requested bank records and again failed to provide a written description of McKee's efforts to obtain such records, as requested in FINRA letters dated July 14 and August 5, 2011.
55. On August 25, 2011, FINRA staff sent a letter to counsel for McKee, by email, requesting for the fourth time that, pursuant to FINRA Rule 8210, McKee produce

certain bank records first requested on April 25, 2011. In its August 25, 2011 letter, the staff requested for the third time that, pursuant to FINRA Rule 8210, McKee provide a written description of the steps taken by him to obtain bank records first requested on April 25, 2011. In its August 25, 2011 letter, the staff requested for the second time that, pursuant to FINRA Rule 8210, McKee produce the loan documents and bank records requested on August 5, 2011.

56. On September 2, 2011, counsel for McKee informed FINRA staff by email that he was no longer representing McKee as of that date. Accordingly, on September 15, 2011, FINRA staff sent a letter to McKee, by certified mail, to his residential address as listed in the CRD, requesting that, pursuant to FINRA Rule 8210, McKee immediately comply with the staff's requests dated April 25, July 14, August 5 and August 25, 2011. FINRA enclosed copies of these requests with the September 15, 2011 letter.
57. On September 20, 2011, McKee informed FINRA staff by email that he had retained new counsel. Accordingly, on September 22, 2011, FINRA staff sent a letter to McKee's new counsel, by certified mail and email, requesting again that, pursuant to FINRA Rule 8210, McKee immediately comply with FINRA requests dated April 25, July 14, August 5, August 25 and September 15, 2011. FINRA enclosed copies of these requests with the September 22, 2011 letter.
58. In its September 22, 2011 letter, FINRA staff further requested that, pursuant to FINRA Rule 8210, McKee produce, no later than October 6, 2011, certain documents and information concerning his solicitation of LK to invest in Ventis.

59. On September 23, 2011, counsel for McKee acknowledged receipt of FINRA's September 22, 2011 letter and enclosures. Counsel informed FINRA staff that he had discussed the letter and enclosures with McKee.
60. On October 7, 2011, FINRA staff reminded counsel for McKee, by email, that McKee's responses to all of FINRA's requests for documents and information (other than the information requested for the first time on September 22, 2011), sent pursuant to FINRA Rule 8210, were significantly past due. Counsel for McKee did not respond to the staff's October 7, 2011 email.
61. On October 14, 2011, FINRA staff again reminded counsel for McKee, by email, that McKee's responses to FINRA requests for documents and information, sent pursuant to FINRA Rule 8210, were significantly past due. That day, counsel for McKee responded by email, informing the staff that he had met with McKee and that he had impressed upon McKee "the importance of attending to this task."
62. On October 18, 2011, FINRA staff sent counsel for McKee a letter, by certified mail, requesting that, pursuant to FINRA Rule 8210, McKee immediately comply with FINRA requests dated April 25, July 14, August 5, August 25, September 15 and September 22, 2011. FINRA enclosed copies of these requests with the October 18, 2011 letter.
63. In its October 18, 2011 letter, the staff requested for a second time that, pursuant to FINRA Rule 8210, McKee produced certain documents and information concerning his solicitation of LK to invest in Ventis. Neither McKee nor his counsel ever responded to FINRA's October 18, 2011 request.

***McKee Lied to FINRA Staff***

64. On April 25, 2011, FINRA staff sent a letter to McKee requesting, pursuant to FINRA Rule 8210, his on-the-record testimony on May 17 and 18, 2011 at FINRA offices located at 1801 K Street, NW, Washington DC. By agreement with counsel, FINRA staff rescheduled McKee's testimony for June 14 and 15, 2011.
65. During his on-the-record examination, McKee lied to FINRA staff, falsely claiming that he never solicited customers to invest in Uptown, Sam's or Bedrocks, when in fact he had solicited customers to invest in these ventures.
66. McKee falsely testified that there were no investors in Uptown other than himself and his business partner. FINRA staff asked McKee about an entry on Uptown's balance sheet as of December 31, 2008, which showed a long term liability of \$2,459,662.10 recorded as "investor equity:"

Q. At this time, the end of 2008, any time during 2008, were you soliciting investments in Uptown Development?

A. No. And we didn't have any investment in Uptown Development. So my thought is that this is [McKee's business partner's] money and that he thought the building was worth \$2 million more than our liabilities. But I can go and ask and then I can go over every asset. Because remember I never solicited stuff. If someone wanted to do one, he had his own real estate person.

\* \* \*

Q. Wait a minute. You know people who are invested in Uptown Development Number 1 other than you and [McKee's business partner]?

A. No. Number 1 is just me and [McKee's business partner].

\* \* \*

Q. Is it your testimony that you did not solicit investments from your clients in Uptown Development No. 1?

A. Correct. We sold Master Equity Fixed, or Master Fixed.

67. McKee also falsely testified that he did not know why customer FL's investment in Sam's appeared on FL's account statement, even though McKee personally solicited the investment and even took FL to meet the owner:

Q. What is Sam's Uptown?

A. I don't know what Sam's is, but I know what Uptown is.

\* \* \*

Q. And you are telling me you don't know what Sam's Uptown is?

A. I don't. I don't think it exists.

\* \* \*

Q. So there is \$59,078.66 floating around and you have no idea what it is in?

A. Well, Noteworld knows where the money is, but until he brings me the Noteworld statement I can't know. Remember I didn't do the investment.

68. McKee also falsely testified that he did not solicit investments in Bedrocks.

Q. Okay. How is it that so many of your clients invested in Bedrocks Coffee?

A. I have several guesses, but I don't know for sure.

\* \* \*

Q. So your answer is, "I don't know."

A. Correct.

Q. You didn't have any involvement in these clients' investment in Bedrocks Coffee?

A. We didn't have any involvement in the solicitation of Bedrocks Coffee, but when clients started whining that they didn't get paid, we had lots of involvement in Bedrocks Coffee.

\* \* \*

Q. Did you advise [customer AS] to invest in Bedrocks?

A. No.

69. During his sworn on-the-record examination, McKee relied upon deception to hamper FINRA's investigation of his fraudulent conduct.

**FIRST CAUSE OF ACTION  
Fraud  
(Section 10(b) of the Securities Exchange Act,  
Rule 10b-5, NASD Rule 2120 and FINRA Rule 2020)**

70. The Department realleges and incorporates by reference paragraphs 1-69 above.
71. As detailed above, during the relevant period, McKee knowingly and recklessly induced customers, through material misrepresentations and omissions, and through the use of the means and instrumentalities of interstate commerce, and of the mails, to invest in securities concerning various real estate ventures.
72. In February and March 2006, McKee knowingly and recklessly induced LPL customer SS, through material misrepresentations and omissions, to invest a total of \$74,000 in two real estate ventures.
73. In October 2009, McKee knowingly and recklessly induced Berthel Fisher customer AS, through material misrepresentations and omissions, to invest \$48,000 in Bedrocks.
74. In November 2009, McKee knowing and recklessly induced Berthel Fisher customer KK, through material misrepresentations and omissions, to invest \$100,000 in Bedrocks.



75. In October 2010, McKee knowingly and recklessly induced Berthel Fisher customer LK, through material misrepresentations and omissions, to invest \$50,000 in Bedrocks.
76. In April 2011, McKee knowingly and recklessly induced Morgan Stanley customer LK, through material misrepresentations and omissions, to invest \$100,000 in Ventis.
77. As a result of the foregoing conduct, McKee willfully violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rules 2120 and 2110 and FINRA Rules 2020 and 2010.

**SECOND CAUSE OF ACTION  
Improper Use/Conversion  
(NASD Rule 2330 and FINRA Rule 2150)**

78. The Department realleges and incorporates by reference paragraphs 1–77 above.
79. As detailed above, during the relevant period, McKee improperly used or converted customer funds, without the customers' knowledge or consent, for his own use and benefit.
80. In February and March 2006, McKee improperly used or converted \$74,000 belonging to SS for his own use and benefit.
81. In February 2008, McKee improperly used or converted \$400,000 belonging to KK for his own use and benefit.
82. In August 2008, McKee improperly used or converted \$68,215.36 belonging to TM for his own used and benefit.
83. In October 2010, McKee improperly used or converted \$10,000 belonging to LK for his own use and benefit.

84. In April 2011, McKee improperly used or converted \$100,000 belonging to LK for his own use and benefit. McKee improperly used most of these funds to pay off TM, after TM threatened McKee with legal action, and converted the balance of these funds to his own use and benefit.
85. As a result of the foregoing conduct, McKee violated NASD Rules 2330 and 2110 and FINRA Rules 2150 and 2010.

**THIRD CAUSE OF ACTION  
Unsuitable Investment Recommendations  
(NASD Rule 2310)**

86. The Department realleges and incorporates by reference paragraphs 1–85 above.
87. In October 2009, McKee recommended that a local church with no investment experience invest \$100,000 in Bedrocks, a small, high-risk, start-up venture.
88. At the time, the church was seeking a conservative, income-generating investment with limited risk. McKee's investment recommendation was inconsistent with the church's stated investment objectives and financial needs.
89. McKee sought to disguise the unsuitable nature of the investment by recording false suitability information, including false assets, investment objectives and risk tolerances, on the church's account documents.
90. In November 2010, Bedrocks filed for bankruptcy and the church lost all of its \$100,000 investment.
91. As a result of the foregoing, McKee violated NASD Rules 2310 and 2110 and FINRA Rule 2010.

**FOURTH CAUSE OF ACTION  
False Statements  
(FINRA Rule 2010)**

92. The Department realleges and incorporates by reference paragraphs 1–91 above.
93. McKee lied to an employing member firm, falsely indicating in a series of annual questionnaires that he had disclosed all of his outside business activities, when in fact he had failed to disclose his outside activities in Uptown, Sam's and Bedrocks and failed to disclose his ongoing solicitation of firm customers to invest in these ventures.
94. As a result of the foregoing, McKee violated FINRA Rule 2010.

**FIFTH CAUSE OF ACTION  
Selling Away  
(NASD Rule 3040)**

95. The Department realleges and incorporates by reference paragraphs 1–94 above.
96. As detailed above, during the relevant period, McKee engaged in private securities transactions involving outside real estate ventures: Uptown, Sam's, Bedrocks and Ventis. He solicited investments in these outside ventures without notifying or obtaining prior approval from his employing firms.
97. As a result of the foregoing, McKee violated NASD Rules 3040 and 2110 and FINRA Rule 2010.

**SIXTH CAUSE OF ACTION  
Failure to Cooperate  
(FINRA Rule 8210)**

98. The Department realleges and incorporates by reference paragraphs 1–97 above.

99. During FINRA's investigation, McKee failed to cooperate with FINRA staff. As detailed above and on Schedule A hereto, McKee failed to produce documents and information requested by FINRA staff pursuant to FINRA Rule 8210.
100. As a result of the foregoing conduct, McKee violated FINRA Rules 8210 and 2010.

**SEVENTH CAUSE OF ACTION  
Lying on the Record  
(FINRA Rule 8210)**

101. The Department realleges and incorporates by reference paragraphs 1-100 above.
102. As detailed above, McKee lied to FINRA staff during his sworn on-the-record testimony, falsely stating that he did not solicit investments in Uptown, Sam's and Bedrocks, when in fact he had solicited customers to invest in these ventures.
103. As a result of the foregoing conduct, McKee violated FINRA Rules 8210 and 2010.

**RELIEF REQUESTED**

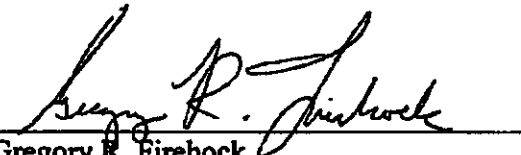
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that McKee committed each of the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that McKee be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that McKee bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and

- D. make specific findings that McKee willfully violated Section 10b of the Securities Exchange Act of 1934.

**FINRA DEPARTMENT OF ENFORCEMENT**

Date: February 14, 2012

  
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## Schedule A

Request Subject	Item(s) Requested	First 8210 Request	First Request Due Date	First Follow up Request	Second Follow up Request	Third Follow up Request	Fourth Follow up Request	Fifth Follow up Request	Sixth Follow up Request	Seventh Follow up Request	Eighth Follow up Request	8210 Request Status (as of Complaint date)
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****9089 for the period <u>September 1, 2008 through April 25, 2011</u> .	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****9089 for the period <u>January 1, 2008 through August 31, 2008</u> .	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****5871 for the period <u>September 1, 2008 through August 31, 2011</u> .	04.25.11	05.20.11	07.14.11								Statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****5872 for the period <u>January 1, 2008 through August 31, 2008</u> .	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****1350 for the period <u>September 1, 2008 through April 25, 2011</u> .	04.25.11	05.20.11	07.14.11								Statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****1350 for the period <u>January 1, 2008 through August 31, 2008</u> .	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****3711 for the period <u>September 1, 2008 through April 25, 2011</u> .	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****3711 for the period <u>January 1, 2008 through August 31, 2008</u> .	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Wells Fargo Bank account number *****7772 for the period <u>September 1, 2008 through April 25, 2011</u> .	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced for the period 11.09.10 through 05.31.11.
Quality Financial Group, Inc. Bank Records	Bank statements for Quality Financial Group, Inc. Wells Fargo Bank account number *****7772 for the period <u>January 1, 2008 through August 31, 2008</u> .	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced

Request Subject	Item(s) Requested	First 8210 Request	First Request Due Date	First Follow up Request	Second Follow up Request	Third Follow up Request	Fourth Follow up Request	Fifth Follow up Request	Sixth Follow up Request	Seventh Follow up Request	Eighth Follow up Request	8210 Request Status (as of Complaint date)
Ventis Investments, Inc. Bank Records	Bank statements for Ventis Investments, Inc. Home Federal/Liberty Bank account number *****2242 for the period September 1, 2008 through April 25, 2011.	04.25.11	06.20.11	07.14.11								Statements produced
Ventis Investments, Inc. Bank Records	Bank statements for Ventis Investments, Inc. Home Federal/Liberty Bank account number *****2242 for the period January 1, 2008 through August 31, 2008.	06.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Uptown Development No. 1, LLC Bank Records	Bank statements for Uptown Development No. 1 LLC Home Federal/Liberty Bank account number *****6094 for the period September 1, 2008 through April 25, 2011.	04.25.11	05.20.11	07.14.11								Statements produced
Uptown Development No. 1, LLC Bank Records	Bank statements for Uptown Development No. 1 LLC Home Federal/Liberty Bank account number *****6094 for the period January 1, 2008 through August 31, 2008.	06.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Uptown Development No. 1, LLC Bank Records	Bank statements for Uptown Development No. 1 LLC Home Federal/Liberty Bank account number *****5981 for the period September 1, 2008 through April 25, 2011.	04.25.11	06.20.11	07.14.11								Statements produced
Uptown Development No. 1, LLC Bank Records	Bank statements for Uptown Development No. 1 LLC Home Federal/Liberty Bank account number *****5981 for the period January 1, 2008 through August 31, 2008.	06.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
McKee's Personal Bank Records	Oregon Community Credit Union Account Number *****9101 for the period September 1, 2008 through April 25, 2011.	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
McKee's Personal Bank Records	Oregon Community Credit Union Account Number *****9101 for the period January 1, 2008 through August 31, 2008.	06.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
McKee's Personal Bank Records	Wells Fargo Bank for the period September 1, 2008 through April 25, 2011.	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
McKee's Personal Bank Records	Wells Fargo Bank for the period January 1, 2008 through August 31, 2008.	06.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced

Request Subject	Item(s) Requested	First 8210 Request	First Request Due Date	First Follow up Request	Second Follow up Request	Third Follow up Request	Fourth Follow up Request	Fifth Follow up Request	Sixth Follow up Request	Seventh Follow up Request	Eighth Follow up Request	8210 Request Status (as of Complaint date)
Mckee's Personal Bank Records	Home Federal/Liberty Bank for the period <u>September 1, 2008 through April 25, 2011</u>	04.25.11	05.20.11	07.14.11	08.05.11	08.29.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
Mckee's Personal Bank Records	Home Federal/Liberty Bank for the period <u>January 1, 2008 through August 31, 2008</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Mckee's Personal Bank Records	U.S. Bank Account Number *****2660 for the period <u>September 1, 2008 through April 25, 2011</u>	04.25.11	05.20.11	07.14.11								Statements produced
Mckee's Personal Bank Records	U.S. Bank Account Number *****2660 for the period <u>January 1, 2008 through August 31, 2008</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
All Bank Records	Staff requested via 8210 that Mckee provide a detailed written description of the steps he took to obtain the requested bank statements and the name and telephone numbers of the person(s) contacted.	07.14.11	07.22.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11		Response incomplete
Loan Related Documents	8210 Request for loan related documents for the period <u>January 1, 2007 to August 5, 2011</u> for Coburg Station, Uptown Plaza, and Valley River Station land, building and construction loans.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced
Loan Related Documents	8210 Request for loan related documents for the period <u>January 1, 2007 to August 5, 2011</u> for Mr. Mckee's "NoteWorld" loan.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced
Specific Transaction Related Documents / Explanations	Bank statements for Home Federal/Liberty Bank account number *****6094 for Uptown Development No. 1, LLC reflect transfers from certain "loan accounts" numbered *****4272 and *****4298. Identify the owner of each of these loan accounts and the purpose of the transfers.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced
Specific Transaction Related Documents / Explanations	Bank statements for the Wells Fargo bank account number *****2093 for Uptown Development No. 1, LLC reflect transfers from accounts numbered "xxxxx1276," "xxxxx1854," and "xxxxx1839." Identify the owner of these accounts and the purpose for the transfers.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced



Request Subject	Item(s) Requested	First 8210 Request	First Request Due Date	First Follow up Request	Second Follow up Request	Third Follow up Request	Fourth Follow up Request	Fifth Follow up Request	Sixth Follow up Request	Seventh Follow up Request	Eighth Follow up Request	8210 Request Status (as of Complaint date)
Specific Transaction Related Documents / Explanations	Bank records for the Wells Fargo account number *****7772 for Quality Financial Planning, Inc. contain two cashier's checks dated June 28, 2010 in the amounts of \$226,143 and \$32,478 payable to "First American Title." Provide a detailed written description of the purpose of these cashier's checks.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced
L K Related Documents / Explanations	1. For the period January 31, 2011 through the present (Sept. 22, 2011) produce a copy of all documents concerning L K. 2. For the same period, produce a copy of all documents concerning "Ventis Investments." 3. Provide a detailed written description of the facts and circumstances surrounding the cashier's check dated April 4, 2011 for \$100,000 made out to "Ventis Investments" and endorsed by McKee including but not limited to the origin and purpose of the \$100,000 investment and a detailed accounting of the disposition of the investment. 4. For the period March 1, 2011 through August 31, 2011, produce all bank records for the Home Federal bank account listed on the reverse side of Ms. K's April 4, 2011 cashier's check including all bank statements and all documents evidencing deposits, withdrawals, check disbursements, or wire transfers.	09.22.11	10.06.11	10.07.11	10.14.11	10.18.11						No documents produced

\* Quality Financial Planning, Inc. was a company that McKee owned and through which he conducted his securities business.

\* \*Quality Financial Group, Inc. was another company owned by McKee.